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File No.: 11704-0001

April 7, 2005

Honorable William G. Bassler
U.S. District Court for
The District of New Jersey
M.L. King, Jr. Federal Building
U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

RE: Walsh Securities v. Michael Alfieri, Esq., et.al.
Civ. No. 97-3496 (WGB)

Dear Judge Bassler:

Please be advised that the undersigned, counsel for defendant Michael Alfieri, Esq. in the above-referenced matter, is in receipt of defendant Stewart Title Guaranty Company's and defendant Irene Difeo's motions to dismiss plaintiff's claims against them.

Please note that defendant Michael Alfieri, Esq. takes no position with regard to the request of the above defendants to have plaintiff's claim against them dismissed.

However, should the above-referenced motions be granted, defendant Michael Alfieri, Esq. respectfully submits that any dismissal granted in favor of the above-referenced defendants should not also serve to dismiss the cross-claims against those defendants. The cross-claims should remain in the case undisturbed.

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In support of this contention, defendant Michael Alfieri, Esq. respectfully directs the Court's attention to the Court of Appeals' holding in Aetna Insurance Company v. Newton, 398 F.2d 729 at 734 (3d Cir. 1968):

“[A] dismissal of the original Complaint as to one of the defendants named therein does not operate as a dismissal of a cross-claim filed against such defendant by a co-defendant.”
Id., citing Fronmeyer v. L. & R. Construction Co., Inc., 139 F.Supp., 579, 585-586 (D.N.J. 1956).

This rule leaving intact cross-claims even where certain defendants prevail on plaintiff's affirmative claims has been consistently applied by federal courts. See, e.g., Fairview Park Excavating Co., Inc. v. Al Monzo Construction Company, Inc., et al., 560 F.2d 1122, 1125-1126 (3d Cir. 1977).

Therefore, it is respectfully requested that this Court preserve any and all cross-claims filed against the co-defendants by defendant Michael Alfieri, Esq., regardless of whether a dismissal of the plaintiff's complaint as to any of the co-defendants is granted.

Respectfully submitted,

HOBBIE, CORRIGAN, BERTUCIO & TASHJY, P.C.

A handwritten signature in cursive script, appearing to read "Edward C. Bertucio, Jr.", is written over a diagonal line that extends from the signature area towards the bottom right of the page.

Edward C. Bertucio, Jr., Esq.

ECB/jg

cc: Clerk, United States District Court (via e-filing)
Attached Counsel List

WALSH SECURITIES v. CRISTO MANAGEMENT, LTD., et al.
Civil Action No. CV 97-3496 (WGB)

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